

ISSUE

In the situation described below, does a grant by a private foundation to a university to establish an educational program constitute an act of self-dealing within the meaning of section 4941 of the Internal Revenue Code because the program benefits a corporation that is a disqualified person?

FACTS

P is exempt from federal income tax under section 501(c)(3) of the Code, and is a private foundation within the meaning of section 509(a). P has made a grant to U, a university that is exempt under section 501(c)(3), and is not a private foundation because it is described in sections 170(b)(1)(A)(ii) and 509(a)(1). By its terms, the grant must be used by U to establish a new educational department providing instruction in manufacturing engineering. Students enrolled in the program will acquire skills useful in a wide range of manufacturing businesses.

W corporation has its headquarters and principal manufacturing plant located in the same city as P and U. W is a disqualified person with respect to P within the meaning of section 4946 of the Code. W intends to seek to employ graduates of the new program at U, and will encourage its employees to enroll in the program. However, W will not receive preferential treatment in its attempts to recruit graduates, and its employees will compete for admission to the program on an equal nondiscriminatory basis with other members of the general public.

It is expected that a number of other manufacturers, including competitors of W, will seek to recruit graduates of the program and to enroll their employees in the program.

LAW AND ANALYSIS

Section 4941 of the Code imposes a tax on each act of self-dealing between a disqualified person and a private foundation. Section 4941(d)(1)(E) provides that the term 'self-dealing' includes any direct or indirect transfer to, or use by or for the benefit of, a disqualified person of the income or the assets of a private foundation.

Section 53.4941(d)-2(f)(2) of the Foundation Excise Tax Regulations provides that the fact that a disqualified person receives an incidental or tenuous benefit from the use by a foundation of its income or assets will not, by itself, make such use an act of self-dealing. For example, a grant by a private foundation to a section 509(a)(1), (2), or (3) organization will not be an act of self-dealing merely because such organization is located in the same area as a corporation that is a substantial contributor and thus a disqualified person with respect to the

foundation. This is illustrated by Example (1) of section 53.4941(d)-2(f)(4), which considers a grant by a private foundation to the governing body of a city for the purpose of alleviating the slum conditions that exist in a particular neighborhood of the city. A corporation that is a substantial contributor to the foundation, and thus a disqualified person with respect to the foundation, is located in the same area in which the grant is to be used. Although the general improvement of the area may constitute an incidental and tenuous benefit to the corporation, such benefit by itself will not constitute an act of self-dealing under section 4941 of the Code.

An incidental or tenuous benefit occurs when the general reputation or prestige of a disqualified person is enhanced by public acknowledgement of some specific donation by such person, when a disqualified person receives some other relatively minor benefit of an indirect nature, or when such person merely participates to a wholly incidental degree in the fruits of some charitable program that is of broad public interest in the community. See Rev. Rul. 77-331, 1977-2 C.B. 388.

In this case, as in the slum clearance program described in Example (1) of section 53.4941(d)-2(f)(4) of the regulations, the educational program is of broad public interest to the community.

The corporation will benefit from the program only in an incidental manner as one of many manufacturing business that can benefit from the skills acquired by the students in the program.

W will not receive preferential treatment in recruiting graduates of the program, and W's employees must compete for admission to the program on an equal basis with the general public, including employees of other manufacturing businesses. Under the circumstances, W will receive only an incidental or tenuous benefit from the grant by P to U.

HOLDING

Since any benefit to the corporation, a disqualified person, is incidental, the grant by the private foundation to the university to establish an educational program in manufacturing engineering does not constitute an act of self-dealing within the meaning of section 4941 of the Code.